# +IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

#### COMPLETE TITLE OF CASE

TIMSTER'S WORLD FOUNDATION,

Appellant,

v.

DIVISION OF EMPLOYMENT SECURITY,

Respondent.

#### **DOCKET NUMBER WD**79053

### MISSOURI COURT OF APPEALS WESTERN DISTRICT

**DATE:** July 26, 2016

#### APPEAL FROM

The Labor and Industrial Relations Commission

#### **JUDGES**

Special Division: Mark D. Pfeiffer, C.J., and Gary D. Witt and Anthony Rex Gabbert, JJ.

#### **ATTORNEYS**

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Attorney for Respondent.



## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

Appella	nt, )	
v. DIVISION OF EMPLOYMENT SECURITY,	)	OPINION FILED: July 26, 2016
Responde	nt. )	
WD79053	]	Labor and Industrial Relations Commission

Witt and Anthony Rex Gabbert, Judges

Mark D. Pfeiffer, Chief Judge, Presiding, and Gary D.

Timster's World Foundation ("Foundation") appeals from a decision by the Labor and Industrial Relations Commission ("Commission"), which found that since January 1, 2012, parent aides/family assistance workers performed services for "wages" in "employment" by the Foundation, within the meaning of those terms as defined in sections 288.034 and 288.036 of Missouri's Unemployment Security Law. In the Foundation's sole point on appeal it avers that the Commission's decision is erroneous because its workers are independent contractors, not employees.

#### AFFIRMED.

Before Special Division Judges:

TIMSTER'S WORLD FOUNDATION,

#### **Special Division holds:**

We engage in a two-step analysis to determine whether the Foundation and its workers are covered by the Missouri Employment Security Law.

The first step is to decide whether their relationship constitutes one of "employment." The Foundation was an "employer" because the workers received remuneration from the Foundation for their services.

The second step is to determine whether the workers were independent contractors of the Foundation rather than employees. The IRS has identified twenty factors as guides for determining whether sufficient control is present to establish an employer-employee relationship. In our examination of the factors challenged by the Foundation in light of the Commission's factual findings, eleven factors favor employee status, while nine favor independent contractor status. Although this is a close call, because the workers received remuneration from the Foundation, it is presumed that the relationship between the workers and the Foundation is one of employee-employer; and the Foundation bears the burden of proof to demonstrate that, instead, the relationship is that of independent contractor. The majority and most important control indicia show that the Foundation retained the right to control the manner in which the workers performed their duties, and the Foundation did not meet its burden of proving that the workers were independent contractors.

There is sufficient competent and substantial evidence in the record to support the Commission's determination that the Foundation's workers performed services for wages in employment and, thus, were not independent contractors.

Opinion by: Mark D. Pfeiffer, Judge

July 26, 2016

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